

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK SWALLEY, an individual,

Plaintiff,

v.

RICHARD V. SPENCER, Secretary of the
Department of Navy,¹

Defendant.

Case No. 17-05513 RBL

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES**

COMES NOW defendant Richard V. Spencer, Secretary of the Department of Navy, by and through his attorneys, Annette L. Hayes, United States Attorney for the Western District of Washington, and Priscilla T. Chan, Assistant United States Attorney for said District, and states as follows in answer to plaintiff Swalley's Complaint for damages:

I. PARTIES

1. Answering the first sentence of paragraph 1, Defendant lacks sufficient knowledge or information to form a belief as to Plaintiff's residence and therefore denies the allegations therein. Answering the second sentence of paragraph 1, Defendant admits the

¹ On August 3, 2017, Richard V. Spencer became the 76th United States Secretary of the Navy. Defendant thus substitutes Secretary Spencer in place of former Acting Secretary Stackley pursuant to Fed. R. Civ. P. 25(d)(1).

1 allegations therein.

2 2. Defendant admits the allegations of paragraph 2.

3 **II. JURISDICTION AND VENUE**

4 3. Paragraph 3 is a statement of jurisdiction, to which no response is required. To
5 the extent a response is required, Defendant admits that jurisdiction is proper based on federal
6 question jurisdiction under 28 U.S.C. §1331.

7 4. Paragraph 4 is a statement of venue, to which no response is required. To the
8 extent a response is required, Defendant admits that venue is proper in the Western District of
9 Washington.

10 5. Defendant lacks sufficient information to admit or deny the truth of the
11 allegations of paragraph 5 and, on that basis, denies the allegations therein.

12 **III. FACTS**

13 6. Defendant denies the allegations of paragraph 6 as stated. Defendant admits that
14 during April 2016, Plaintiff was employed as an engineering manager, acting as the Continuous
15 Improvement Manager, and was not permanently placed into the position of Continuous
16 Improvement Manager until September 2016. Except as expressly admitted, Defendant denies
17 each and every allegation of paragraph 6.

18 7. Defendant denies the allegations of paragraph 7.

19 8. Defendant denies the allegations of paragraph 8.

20 9. Defendant denies the allegations of paragraph 9.

21 10. Defendant denies the allegations of paragraph 10.

22 11. Defendant denies the allegations of paragraph 11.

23 12. Defendant denies the allegations of paragraph 12.

24 13. Defendant denies the allegations of paragraph 13.

25 14. Defendant denies the allegations of paragraph 14.

26 15. Defendant denies the allegations of paragraph 15.

- 1 16. Defendant denies the allegations of paragraph 16.
- 2 17. Defendant denies the allegations of paragraph 17.
- 3 18. Defendant denies the allegations of paragraph 18.
- 4 19. Defendant denies the allegations of paragraph 19.
- 5 20. Defendant denies the allegations of paragraph 20.
- 6 20.1 Defendant denies the allegations of paragraph 20.1.
- 7 20.2 Defendant denies the allegations of paragraph 20.2.
- 8 20.3 Defendant denies the allegations of paragraph 20.3.
- 9 20.4 Defendant denies the allegations of paragraph 20.4.
- 10 20.5 Defendant denies the allegations of paragraph 20.5.
- 11 20.6 Defendant denies the allegations of paragraph 20.6.
- 12 20.7 Defendant denies the allegations of paragraph 20.7.
- 13 20.8 Defendant denies the allegations of paragraph 20.8.
- 14 20.9 Defendant denies the allegations of paragraph 20.9.
- 15 21. Defendant denies the allegations of paragraph 21.
- 16 22. Defendant denies the allegations of paragraph 22.
- 17 23. Defendant denies the allegations of paragraph 23.
- 18 24. Defendant denies the allegations of paragraph 24.
- 19 25. Defendant denies the allegations of paragraph 25.
- 20 26. Defendant denies the allegations of paragraph 26.
- 21 27. Defendant denies the allegations of paragraph 27.
- 22 28. Defendant denies the allegations of paragraph 28.
- 23 29. Defendant denies the allegations of paragraph 29.
- 24 30. Defendant denies the allegations of paragraph 30.
- 25 31. Defendant denies the allegations of paragraph 31.
- 26 32. Defendant denies the allegations of paragraph 32.

PRAYER FOR RELIEF

Plaintiff's prayer for relief does not require an answer, but to the extent one is required, Defendant denies that Plaintiff is entitled to any relief from Defendant.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming any burden of proof that he would not otherwise bear, Defendant asserts the following affirmative and other defenses in response to Plaintiff's Complaint:

1. Plaintiff's Complaint, either in whole or in part, fails to state a claim for which relief may be granted.
2. The Court lacks subject matter jurisdiction over some or all of Plaintiff's claims.
3. Plaintiff has failed to exhaust his administrative remedies for some or all of his claims.
4. Plaintiff failed to exhaust his administrative remedies in a timely fashion as to some or all of his claims.
5. Plaintiff failed to state a prima facie case of retaliation and hostile work environment.
6. Defendant's actions, about which Plaintiff now complains, were taken in a fair, reasonable, and lawful manner under the circumstances then existing.
7. Defendant's actions, about which Plaintiff now complains, were a just and proper exercise of management discretion, undertaken for fair and honest reasons in good faith under the circumstances then existing.
8. There is no basis for imputing liability to the Defendant.
9. The Defendant exercised reasonable care to prevent and correct any harassing behavior. Defendant exercised reasonable care to prevent and promptly correct any workplace discrimination, but Plaintiff unreasonably failed to take advantage of the corrective or complaint procedures offered by Defendant.
10. Plaintiff has no damages. To the extent damages exist, Plaintiff failed to mitigate

1 damages.

2 11. Plaintiff may not recover punitive damages from Defendant.

3 12. Plaintiff may not recover compensatory damages from Defendant under the Age
4 Discrimination in Employment Act.

5 13. Defendant reserves the right to amend this Answer to state additional defenses,
6 and to delete or withdraw defenses, as may become apparent during the course of discovery.

7 WHEREFORE, having fully answered Plaintiff's Complaint and alleging certain
8 affirmative and other defenses, Defendant prays that Plaintiff's Complaint be dismissed with
9 prejudice, that Plaintiff take nothing by his Complaint, and that the Court grants any further relief
10 it deems just and equitable.

11
12 DATED this 8th day of September, 2017.

13
14 Respectfully submitted,

15 ANNETTE L. HAYES
16 United States Attorney

17 s/ Priscilla T. Chan
18 PRISCILLA T. CHAN, WSBA #28533
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24 Email: Priscilla.Chan@usdoj.gov

25 Attorneys for Defendant Spencer

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the United States Attorney's Office for the Western District of Washington, and that I am of such age and discretion as to be competent to serve papers;

I further certify that on September 8, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

Jacob M. Downs: jdowns@corrdowns.com

Joseph P. Corr: jcorr@corrdowns.com

I further certify that on September 8, 2017, I mailed by United States Postal Service the foregoing document to the following non-CM/ECF participant(s)/CM/ECF participant(s), addressed as follows:

-0-

Dated this 8th day of September, 2017.

s/ Marciano Quinonez
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